

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of:

**FEDERAL EXPRESS
CORPORATION**

FAA Order No. 2000-23

Served: December 13, 2000

Docket No. CP99SO0037

DMS No. FAA-2000-6732

**ORDER GRANTING FEDERAL EXPRESS' PETITION
FOR LEAVE TO FILE AN ADDITIONAL BRIEF**

On November 21, 2000, Respondent Federal Express filed a petition for leave to file an additional brief. Federal Express explained in the petition that it was seeking an opportunity to respond to an argument presented in Complainant's reply brief: "namely that Federal Express is subject to the higher standard of care to which air carriers are subject under the Federal Aviation Act because the shipment of hazardous materials by Respondent's Peruvian agent constituted an interline shipment from Peru to the United States." Petition at 1. Federal Express claims that Complainant had not presented the argument about the shipment constituting an interline shipment at any other time in these proceedings, and as a result, it has not had an opportunity to respond to it. As a result, Federal Express argues, good cause exists to permit it to file an additional brief.

Complainant is opposed to Federal Express' petition for leave to file an additional brief. Complainant notes that the interline argument is "just one part of Complainant's argument that Federal Express, in Peru, held itself out as providing air carrier services from Peru." Opposition at 1.

Section 13.233(f) of the Rules of Practice in Civil Penalty Proceedings provides in part as follows:

A party may not file more than one appeal brief or reply brief. A party may petition the FAA decisionmaker, in writing, for leave to file an additional brief and shall serve a copy of the petition on each party. The party may not file the additional brief with the petition. The FAA decisionmaker may grant leave to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The FAA decisionmaker will allow a reasonable time for the party to file the additional brief.

14 C.F.R. § 13.233(f)(2000).

Federal Express has demonstrated good cause to address this narrow question: whether the shipment at issue in this case constituted an interline shipment, and as a result, whether Federal Express should be held to the higher standard of care to which air carriers are held. This appears to be a new issue raised for the first time in Complainant's reply brief. Complainant, in its opposition, does not argue that it had raised the issue of an interline shipment at an earlier time during these proceedings. The law judge did not find that the shipment constituted an interline shipment in his initial decision. A thorough briefing of this issue may be helpful to the resolution of the novel issues presented in this case on appeal.

Good cause having been demonstrated, Federal Express is granted 30 days from the date of service of this order to file its additional brief in accordance with this order. Complainant is granted 30 days from the service of that additional brief to file any reply.

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration



VICKI S. LEEMON¹
Manager, Adjudication Branch

Issued this 12^{9th} day of December, 2000.

¹ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.